IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4765 OF 1992

Ramu O. Mohite ..Petitioner

versus

Somana R. Chougule & Ors. ..Respondents

Mr. G. N. Salunke for the Petitioner.
Mr. R. S. Kate for the Respondent No.2

AND

WRIT PETITION NO. 3808 OF 1994

Somana Rama Chougule & Anr. ..Petitioners
versus
Ramu O. Mohite & Ors. ..Respondents

Mr. R. S. Kate for the Petitioners.

Mr. G. N. Salunke for the Respondent No.1.

CORAM : D. G. DESHPANDE, J.

DATE : 22ND SEPTEMBER, 2006

ORAL ORDER :

1. Both these petitions are arising out of an order passed by Maharashtra Land Revenue Tribunal, Kolhapur, in Revision Application No. MRT-KP-03/1989. Rama is the tenant, Somana Chougule

is the landlord. Proceedings were going on between the parties under the Bombay Tenancy And Agricultural Lands Act, 1948. Revision came to be filed before MRT. That Revision was dismissed on the ground of limitation, that is, it was time barred. According to the said order of MRT, there was delay of 41 days in filing the Revision Application. Lower Court's judgment was delivered on 20.3.1989. It was communicated to the tenant - Rama on 17.4.1989. It was served upon him on 23.4.1989. Then he applied for certified copy on 29.4.1989 and then after stating the facts in the Memo of Revision, the stand was taken that the Revision was well within limitation. However, calculations were made and it was found that there was delay of 34 days, for which no application for condonation of delay was made. Therefore, Revision was dismissed on that ground. According to the tenant his claim was upheld on merits.

2. Learned counsel for the landlord, Mr. Kate has relied upon the judgment of the Supreme Court reported in **(2001)9 Supreme Court Cases 717 Ragho Singh vs. Mohan Singh and others**, wherein Supreme Court in paragraph 6 has held :

> **"We have heard learned counsel for the parties. Since it is not disputed that the appeal filed before the Additional Collector was beyond time by 10 days and an application under Section 5 of the Limitation Act was not filed for condonation of delay, there was no jurisdiction in the Additional Collector to allow that appeal. The appeal was liable to be dismissed on the ground of limitation. The Board of Revenue before which the question of limitation was agitated was of the view that though an application for condonation of delay was not filed, the delay shall be deemed to have been condoned. This is patently erroneous. In this situation, the High Court was right in setting aside the judgment of the Additional Collector as also of the Board of Revenue. We find no infirmity in the impugned judgment. The appeal is dismissed. No costs."**

Mr. Kate for the landlord therefore contended that when admittedly there was delay of 34 days and no application for condonation of delay was filed, the MRT had no alternative but to dismiss it and rightly dismissed the Revision of the tenant. Mr. Kate also contended that if without condoning the delay, the Revision was allowed or any order on merits was passed then that will have a jurisdictional error on the part of the MRT. Therefore, according to him petition of the tenant is not maintainable and it is required to be dismissed.

3. On the other hand counsel for the tenant

made two submissions. Firstly, according to him, if MRT has upheld the contention of the tenant on merits then it should have condoned the delay. Secondly, according to him, in the petition before this court the tenant has given a plausible explanation for delay, which was a bonafide mistake on the part of the Advocate for the tenant in making calculation of the days and therefore he contended that in the writ jurisdiction of this Court and under the inherent powers of this court, this court can treat this petition as an application for condonation of delay and condone the delay giving right to the petitioner to argue his matter on merits. Thirdly, he submitted that for the fault of the Advocate or mistake of the Advocate, the party should not be allowed to suffer.

4. It is true that the High Court in writ jurisdiction generally adopts a liberal approach in matters of delay condonation. However, in the aforesaid judgment of the Supreme Court, Supreme Court was also dealing with the writ petition. Powers of the Supreme Court are much more wider atleast so far as inherent powers are concerned. Even then, in the circumstances of the case, as

reproduced by me above, the Supreme Court did not condone the delay treating that petition before the Supreme Court as application for condonation of delay.

5. It may be generally true that for the fault of the Advocate, party should not be permitted to suffer but in view of this clear cut judgment on the issue, the contentions raised by the Advocate for the tenant cannot be accepted. As a result, no fault can be found with the order of the MRT which dismissed the Revision Application of the tenant, and, therefore consequently, Writ Petition No. 4765 of 1992 is also required to be dismissed. In the result, Writ Petition No. 4765 of 1992 is dismissed. Rule discharged. Stay, if any, vacated.

6. In view of the dismissal of the Writ Petition No. 4765 of 1992, Mr. Kate states that since the Petition of the tenant is dismissed, he does not wish to proceed with Writ Petition No. 3808 of 1994. Therefore, Writ Petition No. 3808 of 1994 is disposed of. Rule discharged.

(D.G. DESHPANDE, J.)